

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

THOMAS T. DAVIS,

Plaintiff,

v.

DURA-LINE CORPORATION,

Defendants.

Case No. CIV-22-224-RAW-GLJ

ORDER

Before the court are Defendant Dura-Line Corporation's Motion for Sanctions [Docket No. 29] seeking dismissal of the case with prejudice pursuant to Fed. R. Civ. P. 41(b), as well as sanctions under Rule 37(b) for plaintiff's failures to meet discovery obligations, Plaintiff Thomas Davis' Opposed Motion to Dismiss Without Prejudice [Docket No. 33] and the United States Magistrate Judge Jackson's Report and Recommendation (R&R) [Docket No. 37]. This case was referred to Magistrate Judge Jackson for all pretrial and discovery matters, including dispositive motions, pursuant to 28 U.S.C. § 636 and Fed. R. Civ. P. 72 .

The case was originally filed in Pittsburg County and was subsequently removed to this court in August 2022. During the pendency of the case numerous discovery failures and disputes have arisen culminating in the defendant's Motion for Sanctions [29] requesting dismissal with prejudice and attorney's fees and costs associated with efforts to obtain discovery responses. The Magistrate Judge ruled on the motion for sanctions contemporaneously filed with the R&R [37], finding Defendant is entitled to relevant fees and costs and holding in abeyance the request for dismissal with prejudice. The Magistrate Judge addressed both motions to dismiss in the R&R [37].

Upon consideration of the motions, the briefing, and the record, the Magistrate Judge issued the R&R [Docket No. 37] on August 16, 2023, recommending that Plaintiff's Opposed Motion to Dismiss Without Prejudice [Docket No. 33] should be granted and the case dismissed without prejudice, subject to certain conditions upon refiling, which are set forth in the R&R [37]. Further, Magistrate Judge Jackson recommends that Defendant Dura-Line Corporation's Motion for Sanctions Pursuant to Rule 37(b) and Rule 41(b) [Docket No. 29] be denied in part, only to the extent Defendant requests dismissal *with* prejudice. The Motion for Sanctions [29] is granted in part by contemporaneous order [Docket No. 36] as to attorney's fees and costs. Any objections to the R&R were to be filed within fourteen days. No objections have been filed.

The court finds that the R&R is well-supported by the evidence and the prevailing legal authority. Accordingly, the R&R [Docket No. 37] is hereby AFFIRMED and ADOPTED as this court's Findings and Order. Plaintiff's Opposed Motion to Dismiss Without Prejudice [Docket No. 33] is hereby GRANTED and the case dismissed without prejudice, subject to certain conditions upon refiling set forth in the R&R [37]. Defendant Dura-Line Corporation's Motion for Sanctions Pursuant to Rule 37(b) and Rule 41(b) is DENIED IN PART, only as to the request for dismissal *with* prejudice. The Motion for Sanctions [29] has been GRANTED IN PART by contemporaneous order as to attorney's fees and costs [Docket No. 36].

IT IS SO ORDERED this 15th day of November, 2023.



**THE HONORABLE RONALD A. WHITE
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF OKLAHOMA**